



September 29, 2008

**VIA HAND DELIVERY &  
ELECTRONIC MAIL**

The Honorable Shira A. Scheindlin  
United States District Court  
Southern District of New York  
500 Pearl Street — Room 1620  
New York, New York 10007

Re: Plaintiffs' Reply to Defendants' Pre-Conference Letter

Dear Judge Scheindlin:

Plaintiffs respectfully submit this pre-conference reply letter in advance of the October 2, 2008, status conference.

**Joint Agenda Items**

**I. Trial Date and Pre-Trial Schedule in *City of New York* case.**

The parties continue to negotiate in advance of the conference.

**Defendants' Agenda Items**

**I. Designation of Additional "Focus" Cases, if Necessary.**

In addition to the twenty five cases referenced by defendants, there still remains over fifty cases pending against ExxonMobil filed by the law firms Baron Budd, Weitz & Luxenberg and SherLeff. At least two of these cases should be selected as focus cases.

**II. City of New York's Identification of Allegedly "Threatened" Wells.**

On Friday, September 26, 2008, the City provided the Defendants with a sufficient response to their interrogatories on threatened wells.

**III. Deadline for Dismissal of Plumes in OCWD.**

Honorable Shira A. Scheindlin  
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Defendants' assertion that "OCWD does not know which plumes it contends has caused it injury" is based upon what can only be a deliberate confusion of stations with plumes. As defendants are aware, OCWD has identified Bellwether Plumes contaminated by more than one station. Defendants confusingly refer to 550 plumes when in fact the 550 number refers to stations and not plumes. It is true that several "plumes" identified by the defendants may not actually be plumes, but rather service stations. OCWD objects to a deadline of October 16, 2008, to identify whether such stations should be included in OCWD's claims, because defendants have failed to provide necessary station specific information that OCWD has been requesting for years.

OCWD is continuing to detect MTBE and TBA in wells and is entitled to present all evidence regarding damages in the District's possession at the time of trial, subject of course to its obligations to supplement discovery. Discovery is currently focused on the Bellwether Plumes, and limited additional discovery necessary to aide in settlement discussions.

**IV. Deadline for the Focus Plume Depositions that Special Master Warner has Order to be Completed in OCWD.**

Defendants' requested deadline of November 7, 2008, to complete all deposition testimony on the Bellwether plumes is unrealistic. Special Master Warner's Pre-Trial Order #41 ("PTO #41") requires Mr. Bolin to complete all deposition preparation at least 10 days in advance of the deposition on each plume. PTO #41 also requires the District to provide written responses to certain categories of information prior to the start of the depositions. It will be impossible for the witness and the District to assemble and provide this information within the time frame sought by defendants. In advance of his deposition on Bellwether Plume Nos. 2, 7 and 9, for example, Mr. Bolin assembled and produced detailed binders of information for each station associated with those plumes. Bellwether Plumes 2, 7, and 9 only involved 15 stations, whereas there are more than 25 stations remaining in the outstanding Bellwether Plumes.

Defendants have not met and conferred with the District concerning the completion of the Bellwether Plume depositions, including any realistic timetable for completion of this discovery. The District suggests therefore that the parties be permitted to discuss the scope of work necessary to complete these depositions before any arbitrary deadline is set.

Respectfully submitted,

WEITZ & LUXENBERG, P.C.

By:

  
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cc: All Counsel of Record